

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:13-CR-138-FL

UNITED STATES OF AMERICA)	
)	
v.)	ORDER OF DETENTION PENDING
)	TRIAL
KENNETH LAMONT BARNES,)	
)	
Defendant.)	

This case came before the court today for hearing on the government's motion, pursuant to 18 U.S.C. § 3142(f), to detain defendant pending trial. The government presented the testimony of an officer with the Wake County Sheriff's Office assigned to a task force of the Bureau of Alcohol, Tobacco, Firearms and Explosives. Defendant presented the testimony of the proposed third-party custodian, his sister. The court also reviewed the pretrial services report. After careful consideration pursuant to 18 U.S.C. § 3142(g) of the credible information and argument submitted, and based on the findings and reasons stated below and in open court, the court finds by clear and convincing evidence that there is no condition or combination of conditions that will reasonably assure the safety of any other person and the community before trial if defendant is released. The government's motion is therefore GRANTED.

Background

Defendant was charged in a one-count indictment on 8 May 2013 with possession of a firearm by a felon on 27 December 2012 in violation of 18 U.S.C. §§ 922(g)(1) and 924. The evidence presented at the hearing showed that on the alleged offense date defendant was found by police with a loaded handgun on his person. He admitted to ownership of it. He explained that he obtained it in a trade for another pistol and that he needed a gun for protection because he

had previously been the leader of a drug-trafficking ring. At the time of alleged offense, defendant had been convicted of at least six felonies, including a federal conviction (in this court) for conspiracy to distribute and to possess with the intent to distribute crack cocaine. He had completed an 11-year term of imprisonment for the federal conviction about a year prior to the instant alleged offense and was serving a term of supervised release.

Discussion

The law requires that defendant be detained pending trial based on the following principal findings and reasons: evidence showing that the government has a strong case, including the evidence reviewed above; the gun-related nature of the offense charged; the circumstances of the offense charged, including the loaded status of the gun, defendant's having engaged in drug trafficking to obtain it, and his possession of the gun after serving an extended prison sentence and while on supervised release (demonstrating that the prospect of further imprisonment is not an effective deterrent to defendant); defendant's criminal record, including the felony convictions noted, revocation of his supervised release based on the instant alleged offense conduct, and revocation of state probation the one time he was placed on it; the danger of continued gun-related offense conduct by defendant if released; the unsuitability of the proposed third-party custodial arrangement due to the presence of a minor in the home (particularly in light of the danger defendant claims he is in from persons with whom he previously distributed drugs) and the extent of the risk of danger presented by defendant; and the other findings and reasons stated in open court.

The court considered evidence offered as mitigating, but finds that the factors favoring detention strongly outweigh such evidence.

Conclusion

IT IS THEREFORE ORDERED that defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility shall deliver defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

This, the 17th day of July 2013.


James E. Gates
United States Magistrate Judge